

also appeared in PB22 in which he offered a licence fee of \$12,900 for six pieces of water colour paintings priced for a total of \$8,600. The reason for the plaintiff's claim for licence fee at twice the price appears at pp 4-5 of the notes of evidence:

Quotation of \$2.75 per copy as royalty and requested for S\$1.275 per image for copyright fees.

Second proposal. Painting cost \$850 per piece.

In proposal 1, I asked for \$1,275 per image and that the value of artwork was \$850. Therefore licence fee is only one and half times in 1985.

The reason why I am asking for double the value now is because this is a water-colour painting but the art-form in the calendars are of a different kind, ie made of copper and metal.

Refer to p 21 PB.

The reason why there is no maximum limit if the original is purchased which something which I cannot remember.

Refer to p 20 PB.

I am asking for royalty of \$2.75 per copy. The calendars referred to are table calendars.

Refer to p 22 PB.

Bon Voyage's letter to Art Offices dated 3 January 1986. We were approached by Art Offices for a quotation.

The total amounts to \$1,600 + \$7,000 = \$8,600 and licence fees of \$12,900.

Licence fee is one and a half times the value of the artworks.

Bearing in mind that only 350 copies of calendars are involved, a licence fee of one and a half times the value is more than reasonable. I see no reason why the rate should be any different due to the different artform. I therefore allow the defendant's appeal and award the plaintiff the sum of \$22,500 by way of loss of licence fee. This sum is to carry interest at 6% per annum from the date of filing of the writ.

I dismiss the plaintiff's cross-appeals. The defendant is awarded costs of the appeal.

Appeal allowed; cross-appeals dismissed.

Solicitors: Rodyk & Davidson; Sim Hill Tan & Wong.

Reported by Azra Moiz

A **Kawakami (S) Pte Ltd v Fudo Construction Co Ltd**

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS
NO 162 OF 1990
CHAN SEK KEONG J
26 NOVEMBER 1990

B *Civil Procedure — Order of court — Application to vary previous court orders — Whether order was a nullity or ambiguous — Rules of the Supreme Court 1970, O 24 r 2(5)*

This was an application by the claimants under O 24 r 17 of the Rules of the Supreme Court 1970 for either a revocation or a variation of two previous court orders. The first was an order to both parties to exchange their bundles of documents within 14 days. The second order ordered the claimants to serve their bundles of documents within 21 days or have their action dismissed. The claimants claimed that the first order was either a nullity or that it was ambiguous, and that the second order was ultra vires as the first order was a nullity.

Held, dismissing the claimants' application:

D (1) The first order was not a nullity since it was made within the jurisdiction of the court. Neither was it ambiguous since it was clear that it had to be read sensibly to refer to all documents connected with the dispute.

(2) The second order was made to enforce the first order as the claimants had been dilatory about compliance with the first order. The application was thus dismissed.

E [*Editorial Note: The claimants have appealed to the Court of Appeal vide Civil Appeal No 103 of 1990.*]

Legislation referred to

Rules of the Supreme Court 1970 O 24 rr 2(5), 3(1), 16(1), 17

F *Low Tiang Hock* for the claimants.
Tan Yeow Choo (Ms) for the respondents.

Cur Adv Vult

G **Chan Sek Keong J:** This was an application by the claimants under O 24 r 17 of the Rules of the Supreme Court 1970 for revocation and/or variation of two interlocutory orders of court. The said rule provides as follows:

Any order made under this Order (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the cause or matter in connection with which the original order was made.

H

The orders of court were the order of Lai Kew Chai J made on 16 March 1990 ('the first order') and the order of Yong Pung How J made on 27 July 1990 ('the second order'). The first order ordered as follows:

I

- (1) the parties exchange the bundles of documents within 14 days from the date of order made hereof;
- (2) there be inspection of documents within 28 days from the date of order made hereof; and
- (3) the costs of this application be referred to the arbitrator for his decision.

The second order ordered as follows:

- (1) the claimants' action be dismissed with costs including the costs of this application to be taxed unless the claimants do within twenty-one (21) days from the date of order made hereon serve the bundles of documents on the respondents pursuant to the order of court dated 16 March 1990;
- (2) the claimants do file an affidavit within twenty-one (21) days from the date of order made hereon verifying that all documents have been served pursuant to the said order of court dated 16 March 1990; and
- (3) the costs of this application to be referred to the arbitrator for his decision.

The application before me was to revoke and/or vary the two orders in the following manner:

- (1) that in place of the said orders the parties to the arbitration proceedings be ordered to serve on each other a list of documents relating to the issues in the arbitration proceedings within 60 days from the date of the order to be made herein and file an affidavit verifying such lists;
- (2) that in place of the said orders there be inspection of documents within 30 days of the delivery of the respective lists;
- (3) that the parties after the exchange of copies of bundles of documents be at liberty to apply for such further and better lists of documents as may be considered relevant to the arbitration proceedings;
- (4) that the order of Mr Justice Lai Kew Chai made on 16 March 1990 and the order of Mr Justice Yong Pung How made on 27 July 1990 be revoked;...

I dismissed the application after hearing counsel for the parties. The claimants have appealed.

The material facts leading to this application are set out in the grounds of judgment given by Yong Pung How J on 12 November 1990. The claimants relied on the following grounds in support of their application:

- (1) the first order was a nullity in that under O 24 the court had power to order the making and delivery of a list of documents (which should be in Form 40) but not to exchange bundles of documents;
- (2) the first order was ambiguous; and
- (3) the second order was ultra vires O 24 r 16(1) as the first order was a nullity.

I was puzzled by this notion of 'nullity' in relation to the said orders. Where the court has jurisdiction, as here, any order made in exercise of such jurisdiction can never be null and void. It can be wrong on other grounds, eg the court has applied the law wrongly or applied the wrong law or exercised its discretion wrongly, or found the facts wrongly etc...

In my view, counsel for the claimants has adopted a pedantic and formalistic approach to O 24. Discovery of documents is one of the means to achieve a fair and more transparent trial. Each party is required to disclose to the other the relevant documents they have or in their power to have so that each may not be taken by surprise

A by the other, subject to the law as to public and private interest immunity against disclosure. As each case that comes before the courts is different from the next, O 24 r 2(5), as expected, is expressed in broad terms as follows:

On the application of any party required by this Rule to make discovery of documents, the Court *may* —

- (a) order the parties to the action or any of them shall make discovery under paragraph (1) [requiring exchange of a list of documents] of such documents or classes of documents only, or as to such only of the matters in question, as may be specified in the order; or

...

C Similarly, O 24 r 3(1) provides as follows:

Subject to the provisions of this Rule and of Rules 4 and 8, the Court *may* order any party to a cause or matter (whether begun by writ, originating summons or otherwise) to make and serve on any other party a list of the documents which are or have been in his possession, custody or power relating to any matter in question in the cause or matter, and may at the same time or subsequently also order him to make and file an affidavit verifying such list and to serve a copy thereof on the other party.

Instead of ordering a list of documents, Lai Kew Chai J decided to order that a bundle of documents be exchanged. He could have made an order directing a list of documents be made up and served but he made the order he did because, as I was told, the arbitrator had made a similar order. The dispute being subject to arbitration, Lai Kew Chai J must have been satisfied that the arbitrator's direction was made to suit the circumstances of the case.

F I was unable to see why Lai Kew Chai J was wrong in making the first order in the form that he did. The said order has to be read sensibly. Prima facie, it referred to all documents connected with the dispute. It allowed the parties to sort out the relevant documents for exchange. The respondents, acting on the said order, did serve on the claimants 24 bundles of documents up to 19 October 1990. The claimants did not complain that the discovery was inadequate. Their complaint was that discovery in that manner avoided the requirements of Form 40. The claimants themselves also delivered copies of documents to the respondents, albeit intermittently. Hence the second order. Before me, they complained that they were uncertain as to what documents they should deliver. They even complained that the two orders of court did not say whether original documents or copies should be delivered! Paragraphs 5 and 6 of the affidavit filed on behalf of the claimants contained the complaint that Yong Pung How J made the second order in spite of their stand that they had delivered all the documents.

Before me, they reiterated this stand. Counsel for the claimants also confirmed that his clients had given

everything. Counsel for the respondents did not complain about any failure on the part of the claimants to comply with the second order. That being the position of the claimants, I did not understand the purpose of this application except perhaps to assuage the claimants that any general compliance with the said orders would constitute full compliance thereof.

I was also unable to see how the second order was 'ultra vires' O 24 r 17. The second order was made under that Rule to enforce the first order which was then valid and enforceable in accordance with its terms.

For the above reasons, I found that no sufficient cause had been shown to revoke or vary the first order or the second order.

Application dismissed.

Solicitors: *Donaldson & Burkinshaw; May Oh & Wee.*

Reported by *Terence Tan Bian Chye*

Cosmic Insurance Corp Ltd v Hup Chuan Guan Trading Co & Anor

HIGH COURT (SINGAPORE) — ORIGINATING MOTION
NO 123 OF 1989
CHAN SEK KEONG J.
20 OCTOBER 1990

Insurance — Duty of insured — Whether insured had failed to maintain vehicle in efficient condition

The appellants were insurers of the respondents' motor vehicle against third party claims. The second respondent was involved in a traffic accident while driving this vehicle. A summons was then issued against the second respondent. After this, the respondents informed the appellants of the accident, but were advised to seek independent legal representation in view of the fact that the appellants might later repudiate liability under the insurance contract. The respondents decided to plead guilty and were convicted of two traffic offences, including one of driving a vehicle when it had a bald tyre. This was followed by a suit against the respondents by the parties suffering loss in the traffic accident, which the respondents lost. They accordingly claimed an indemnity from the appellants. When the appellant repudiated liability on the grounds that the respondents' vehicle had a bald tyre, the dispute was referred to arbitration, which was then decided in favour of the respondents. The appellants appealed against this decision on the ground that the arbitrator's decision was wrong in law.

Held, dismissing the appeal:

(1) The arbitrator had made a finding of fact that the respondent's vehicle did not have a bald tyre. The appellant's repudiation was thus unlawful.

(2) (Obiter) The appellant could have repudiated liability on the ground that the respondents by pleading guilty to the traffic offences had made an admission in breach of the

A contract of insurance, but this issue was not before the arbitrator so there could be no appeal on this ground.

Cases referred to

- 1 *SIMU Mutual Insurance Association v Minson's Ltd* [1938] NZLR 829 (refd)
- 2 *Lickliss v Milestone Motor Policies at Lloyds* [1966] 2 All ER 972 (refd)
- 3 *Terry v Trafalgar Insurance Co Ltd* [1970] 1 Lloyd's Rep 524 (refd)

Legislation referred to

Road Traffic Act (Cap 276, 1985 Ed) s 26(1)
Motor Vehicles (C&U) Rules 1974 r 92(1)(f)

Ong Pang Meng for the appellants.

Paul Lee for the respondents.

Cur Adv Vult

Chan Sek Keong J: This is an appeal by the insurers against the award of an arbitrator. The insurers had issued a commercial vehicle policy covering the insured against claims by third parties for loss and damage arising from accidents caused by the insured's vehicle, a motor tipper.

On 16 August 1984, the second respondent whilst driving the said vehicle was involved in an accident with a motor bus at a major road junction. The accident occurred on account of the second respondent trying to cross the junction against the traffic light.

After the accident, the first and second respondents notified the insurers of the accident. When a summons was issued against the second respondent, they also went to see the appellants' representative with the summons. The representative advised them to engage their own lawyers to defend the charges as the appellants were not prepared to assist. The reason for the refusal is stated in a letter dated 26 December 1984 from the appellants to the first respondent. The letter read:

G We refer to the captioned accident and wish to point out that one of the police charges against your driver is in respect of one of the tyres of your lorry being bald at the material time of accident and if he is convicted of this charge, this would constitute a breach of the policy condition entitling us to repudiate liability. It would therefore be in your interest to defend the said charge on your own account if you wish to.

H The respondents understood the insurers to have washed their hands off the matter, as a result of which the second respondent pleaded guilty on 24 July 1985 to two charges for traffic offences, one for dangerous driving under s 26(1) of the Road Traffic Act (Cap 276, 1985 Ed) and the other for driving the vehicle when it had a bald tyre under r 92(1)(f) of the Motor Vehicles (C & U) Rules 1974.

I The next event that happened was the institution of a claim for damages against the respondents by an